

Country of Origin Labeling Program
Room 2092-S
Agricultural Marketing Service,
USDA STOP 0249
1400 Independence Avenue SW
Washington, DC 20250-0249

February 1, 2005

Re: Docket No. LS-03-04, Mandatory Country of Origin Labeling of Fish and Shellfish; Interim Final Rule

We, the undersigned organizations, would like to take this opportunity to comment on the Mandatory Country of Origin Labeling (COOL) of Fish and Shellfish; Interim Final Rule. While we commend the Agriculture Marketing Service (AMS) U.S. Department of Agriculture (USDA) for developing and distributing the interim final rules on schedule, we request that **the rules be more stringent and protect consumers and their right to know** where their food comes from and how it is raised. Our primary concerns include the definition of processed food items, which would be exempt from mandatory country of origin labeling, and the rationale for the agency's calculation of costs incurred.

Definition of Processed Food Item

National surveys indicate that consumers want mandatory labeling and prefer to purchase U.S. products. The USDA improperly dismisses surveys indicating that 86% of American consumers favor country-of-origin labeling, **and of those who favor country-of-origin labeling, 78% prefer mandatory labeling over voluntary labeling** (*Fresh Trends 2002* survey, published in *The Packer*). Another national survey indicates that **62% of consumers interviewed would purchase U.S. produce if it had a logo or label identifying its country of origin.** (Survey conducted by the Florida Dept. of Agriculture and Consumer Services in Jan. 2003). The USDA has dismissed these surveys, yet has not been able to present evidence indicating otherwise.

As AMS originally considered, the definition of processed foods must be narrowed to ensure a wider range of seafood is labeled. Processed foods, under the current definition in Sec. 60.119, **count for up to 50% of the finished product. Exempting 50% of the product does not accurately reflect the law, nor consumer preference to know the country of origin and farmed or wild caught status of the seafood they purchase.** This is especially worrisome given the flood of recent peer-reviewed scientific papers indicating that specific seafood that **are either wild-caught or farm raised have high levels of contaminants. For example, farm raised salmon is known to contain dioxins, but consumers will not be able to use this knowledge to make an informed purchasing choice when they buy canned salmon, since it is exempt from COOL. In these cases, wild salmon fishing communities in the U.S. would not have the opportunity to benefit since consumers would not be able to choose their product based on this knowledge.**

According to previous comments to USDA concerning country of origin labeling, small producers, who could bear the brunt of the economic impact, support narrowing the definition of processed foods to include, for example, canned seafood. Omitting 50% of the seafood sold in the U.S. from the country of origin requirements completely undermines the law. **We urge the USDA to narrow the definition of processed foods to be similar to the October 2003 proposed rule (68 FR 61944), to allow more seafood to be subject to mandatory labeling.**

Economic Analysis:

The USDA's entire economic analysis is based on an assumption that any cost of implementing COOL would only serve as a burden to the industry, and ignores any benefit from granting American consumers the right to know the origin of the seafood they purchase.

The final interim rule states that "USDA also finds little evidence that consumers are likely to increase their purchase of food items bearing the U.S. origin label as a result of this rulemaking. Current evidence does not suggest that U.S. producers will receive sufficiently higher prices for U.S.-labeled products to cover the labeling, recordkeeping, and other related costs. The lack of participation in voluntary programs for labeling products of U.S. origin provides evidence that consumers currently are unwilling to pay price premiums sufficient to recoup the costs of labeling." (Page 59727)

The agency's argument that lack of participation in voluntary programs somehow indicates consumers' unwillingness to pay ignores the fact that the decision to label in a voluntary program is left to producers, and does not serve as adequate basis for dismissing the possibility that consumers will benefit from mandatory COOL.

As noted earlier, national surveys indicate that the overwhelming majority of consumers prefer mandatory country of labeling. The USDA does not point to any evidence indicating otherwise and simply dismisses the surveys without any rationale. *"The Agency does not believe that these types of studies provide a sufficient basis to estimate the quantitative benefits, if any, of COOL." (Page 59728)*

The USDA must provide much stronger evidence to verify their position and if they cannot, then they should not assume that incurred costs of COOL are solely a burden to the industry without any consumer benefit. Last year, even the General Accounting Office refuted the USDA's inflated cost estimates on COOL.

A number of states already have COOL in place, and it costs less than 1 cent per household per week to cover the costs. According to the USDA's cost analysis, employee benefits were included, even though the extra hours would not even require a part-time employee to be hired; therefore, including those costs are irrelevant. Without benefits, producers would require an addition 12 hours per year – one hour a week comes to \$131.88 per firm per year. Processors/wholesalers would require an addition 12 hours/year, which comes to \$160.92 per firm per year. Retailers would require an

addition 26 hours per year, or 30 minutes per week, which comes to \$348.40 per year per firm, without benefits. If the entire cost to producers, suppliers, and retailers were transferred to consumers, the cost to consumer would come to .08 cents extra per pound.

Enforcement and Fines:

The interim final rules on country of origin labeling for seafood did not outline an effective enforcement system to ensure that producers, suppliers and retailers comply with the law. **We recommend that the USDA develops a comprehensive enforcement program with adequate compliance review.** In addition, if a company is found to be in violation, a \$10,000 fine is insignificant. If they are found to violate the law twice, they should be prohibited from carrying the seafood that was not labeled for a one month period. If they are found to violate it twice, they should be prohibited from carrying the seafood for a three month period.

Every link in the chain of custody (Sec. 60.400(b) 4) is responsible for maintaining and transmitting the correct information. We recommend that the USDA ensures that the country of origin labeling information is maintained throughout the chain of custody to give consumers accurate information about where their seafood is coming from. Numerous health reports have been released recently indicating certain seafood can cause health problems. For consumers to maintain their personal health, they have to have information about the entire chain of custody of their food. In addition, if a viral outbreak occurs, the seafood in every grocery store freezer and at every fish market has to be traced back to the source, whether it is at the farm, the processor or in transport.

We recommend that small businesses not be exempt from the law. Since suppliers maintain the information of country of origin, then it should not be a burden for small business, earning less \$230,000 per calendar year to carry a sign indicating the country of origin, even if it is simply a marker.

Regulatory Flexibility:

The USDA conducted a regulatory flexibility analysis, as required, and defended the exemption of small business, making less than \$230,000 per year on seafood.

Unfortunately, small businesses sell the majority of the seafood sold in the U.S. that would be eligible for COOL, under these proposed rules. The USDA notes, "Therefore, approximately 98 percent of the fish and seafood wholesalers could be considered as small firms" (Page 59737).

The USDA also defines a small business, according to the SBA definition, with annual receipts less than \$750,000 per year. According to that definition, 90 percent of the farm operations in the U.S. would be exempt from mandatory country of origin labeling. Does the same rule apply to foreign operations, and if so how many would be exempt?

These definitions of small scale would exclude the vast majority of seafood sold in the U.S. to be labeled with the country of origin and production method. As indicated in the

rule, “[T]he interim final rule does not dictate systems that firms will need to put in place to implement the requirements of the rule. Thus, different segments of the affected industries will be able to develop their own least-cost systems to implement COOL requirements. For example, one firm may depend primarily on manual identification and paper recordkeeping systems, while another may adopt automated identification and electronic recordkeeping systems.” (Page 59739) This shows that industry already has been given substantial flexibility. **We recommend that the USDA include these small businesses and they can use signs or markers, which would decrease the cost of compliance.**

General:

We recommend that the USDA ensures that blended/ mixed commodities clearly state which product is from which country and which product is farm raised or wild caught.

The USDA did not clarify why October 6, 2005 is the date by which to begin enforcement, although fish caught after December 6, 2005 are expected to carry a country of origin label. We recommend that the USDA require immediate compliance as of April 2005. The industry has already had 6 months to prepare.

We, the undersigned, request that the U.S. Department of Agriculture implement the law, as mandated by Congress, rather than exempt the majority of concerned businesses and refuse to take the responsibility to actively enforce it. For more information or questions, please contact Andrianna Natsoulas, Public Citizen at 202-454-5188.

Alaska Oceans Program
California Dairy Campaign.
California Farmers Union
Center for Food Safety
Community Alliance with Family Farmers
Cook Inlet Keeper
Go Wild Campaign
Institute for Agriculture and Trade Policy (IATP)
Institute for Fisheries Resources (IFR)
Mangrove Action Project
Monterey Bay Aquarium
Pacific Marine Conservation Council
Pacific Coast Federation of Fishermen's Associations (PCFFA)
Public Citizen